HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

First Appeal No.48 of 2007

Appellants/ Plaintiffs/ Landlords	1. Vinod Kumar Dikshit, aged about 36 years, S/o Late Shri Lal Prasad Dikshit 2. Rajkumar Dikshit, aged about 30 years, S/o Late Shri Lal Prasad Dikshit 3. Dinesh Kumar @ Ratiram Dikshit, S/o Late Shri Lal Prasad Dikshit All residents of Maudahapara, Raipur (C.G.)
versus	
Respondent/ Defendant/ Tenant	Mohd. Saleem @ Abdul Saleem, S/o Hafiz Gaffur, Near Shiv Mandir, Maudahapara, Raipur (C.G.)

First Appeal under Section 96 of the Code of Civil Procedure, 1908

Present : Appellants by Shri Sanjay S. Agrawal, learned counsel.
Respondent by Shri B.L.Dembra, learned counsel.

JUDGMENT

(Delivered on this 17th day of October, 2007)

Heard finally.

(2) The appellants/plaintiffs are aggrieved by the judgment and decree dated 16-03-2007 passed by VIIth Additional District Judge, Raipur in Civil Suit No.1-A/1995, whereby the suit for eviction of the respondent/defendant/tenant on grounds under clauses (a), (c), (d) and (f) of sub-section (1) of Section 12 of the Madhya Pradesh Accommodation Control Act, 1961 (henceforth 'the Act, 1961') was dismissed.

(3) It is not disputed that prior to the impugned judgment and decree, the trial Court had, on 06-08-1998, dismissed the suit filed by the

appellants/plaintiffs. The appellants/plaintiffs preferred a first appeal. Vide judgment dated 26-09-2006 passed in First Appeal No.436/1998, this Court remanded the matter to the trial Court with certain directions. After such remand, the trial Court has again dismissed the suit on the ground that the appellants/plaintiffs have failed to establish the relationship of landlord and tenant between the appellants/plaintiffs and the respondent/defendant over the suit plot No.7, 9 and 11, situated over Khasra No.229/1 and 229/4, total area 18,000 Sq.Ft., at Krishna Kumar Road, Maudahapara, Raipur.

(4) Shri Sanjay S. Agrawal, learned counsel for the appellants/plaintiffs has assailed the impugned judgment and decree passed by the learned VIIth Additional District Judge, Raipur on the ground that since the trial Court has, in paragraph 27, relied on certain documentary evidence Ex.P-24, Ex.P-14/C and Ex.P-23, showing that the respondent/defendant had taken the suit plot on rent from one Lal Prasad Dikshit, father of appellants the finding recorded by the trial Court that the respondent/defendant is not the tenant of the appellants/plaintiffs is perverse. Reference was also made to paragraph 34 of the impugned judgment, wherein the trial Court has also held that the appellants/plaintiffs required the suit plot *bona fide* for non-residential purpose. It was urged that the impugned judgment and decree is perverse inasmuch as there was sufficient material on record to prove that relationship of landlord and tenant existed between the parties and the appellants/plaintiffs required the suit plot *bona fide* for non-residential purpose.

(5) On the other hand, Shri B.L.Dembra, learned counsel for the respondent/defendant did not oppose the prayer while submitting that the respondent/defendant is not in possession of the suit plot and shall not

cause any hindrance in the process of taking possession of the suit plot by the appellants/plaintiffs through the process of Court.

(6) No other ground or submission was urged or made.

(7) Having heard the rival contentions, I have perused the impugned judgment as also the documentary evidence led by the appellants/plaintiffs. It is clear that the trial Court has recorded a finding in favour of the appellants/plaintiffs that they require *bona fide* the suit plot for non-residential purpose, which is a ground for eviction of the respondent/defendant available to the appellants/plaintiffs under Section 12(1)(f) of the Act, 1961. As regards the finding recorded by the learned trial Court in paragraph 27, I am of the considered opinion that in view of the documentary evidence Ex.P-24, Ex.P-14/C and Ex.P-23 led by the appellants/plaintiffs as also the observations recorded by the learned trial Judge in paragraphs 27 and 33, the finding that the appellants/plaintiffs have failed to prove that relationship of landlord and tenant existed between the parties, is perverse. In view of the above, the impugned judgment and decree is liable to be set aside.

(8) Appeal is allowed. The impugned judgment and decree is set aside. The suit for eviction of the respondent/defendant is decreed in favour of the appellants/plaintiffs under Section 12(1)(f) of the Act, 1961. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal